IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CASE NO. 1:CR-08-194

:

LUIS ENRIQUE TORO

v.

MEMORANDUM

Before the court is a motion for sentence reduction, release and discharge filed by defendant Luis Enrique Toro. Defendant cites to 7 F.3d 334 (3d Cir. 1993), Federal Rule of Civil Procedure 5(e), and 18 U.S.C. § 3353(a) in support of his request for relief.

The case cited by Defendant, *Favia v. Indiana University*, 7 F.3d 334 (3d Cir. 1993), involved an amendment of an injunction. This case is not pertinent to the issue before this court. Federal Rule of Civil Procedure 5(e) applies to civil cases and, in any event, there is no subsection (e) to that rule. To the extent that Defendant intended to cite to Federal Rule of Criminal Procedure 5, that section applies to procedures at an initial appearance. Rule 5.1 applies to procedures at preliminary hearings. There is no 18 U.S.C. § 3353(a). In the event that Defendant intended to cite section 3553(a), the factors set forth therein were considered at the time of sentencing.

More important in considering the instant motion is that Defendant has not supported his motion with a brief as required by Middle District Local Rule 7.5. He refers to an attached exhibit but no exhibit was filed with the motion.

Defendant is advised that Federal Rule of Criminal Procedure 35 controls when a motion to correct or reduce a sentence can be filed. If the sentencing

court needs to correct a sentence that resulted from an arithmetical, technical or other clear error, the time limit to do so is 14 days from the imposition of sentence. The only other time a sentence can be reduced pursuant to Rule 35 is by motion of the Government. Defendant does not qualify for consideration under Federal Rule of Criminal Procedure 35.

For the reasons stated above, Defendant's motion will be dismissed. An appropriate order will be issued.

s/Sylvia H. Rambo
United States District Judge

Dated: July 9, 2010.

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 \mathbf{v}_{\bullet}

ORDER

In accordance with the accompanying memorandum, **IT IS HEREBY ORDERED THAT:**

- 1) Defendant's motion for sentence reduction, release and discharge is **DISMISSED**.
 - 2) This court declines to issue a certificate of appealability.

s/Sylvia H. Rambo
United States District Judge

Dated: July 9, 2010.